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NEPAL

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I. LAND AND PEOPLE

1. Nepal is an independent, indivisible, unitary, sovereign Kingdom of South Asia. It is situated on the southern slopes of the Himalayas between China in the north and India in the south, occupying a key and strategic position. Nepal has for centuries been an independent sovereign State. It has never been conquered, no foreign Power has ever occupied the country nor intervened in its internal and external affairs. No foreign flag has ever flown over Nepal.

2. Nepal has an area of 147,181 sq km. According to the national census of 1991, Nepal's population is 18,491,097 of whom 9,220,974 are men and 9,270,123 are women; and 88 per cent is rural with agriculture being their major occupation. 54.5 per cent of the male population is literate whereas the percentage of literacy among women is only 25 per cent. The population density is 125.6 persons per sq km. According to the census, there are 3,328,721 families in Nepal and the average family size is 5.6 persons. The urban population is 9.2 per cent. 42.4 per cent of the total population is under 14 years of age and 5.8 per cent of the population is above 60 years of age. The percentage of the population between 15 to 60 years is 51.8 per cent. The per capita income is estimated to be at US$ 170 and 40 per cent of the people are still living below the poverty line.

3. The bulk of the population is Hindu (86.5 per cent). However, there is a considerable number of religious sects such as Buddhist (7.7 per cent), Muslims (3.5 per cent) and others (2 per cent). These groups of people are scattered over different parts of the country and have been divided into many sects and ethnic groups. Nepal is a multi-ethnic and multilingual country. Each community, group and tribe has its own mother tongue. Nepali is the mother tongue of 50.3 per cent of the population. Therefore, the Nepali language has become the official language of the nation. All languages of different communities spoken as the mother tongue in the various parts of the Kingdom are the national languages of Nepal. Under the Constitution of the Kingdom of Nepal, 1990, each community has the right to preserve and promote its language, script and culture and operate schools up to the primary level in its own mother tongue.

4. Other socio-economic and cultural indicators of Nepal are as follows:

GNP increase rate	-	21.5 per cent
Average rate of inflation	-	17.3 per cent
External debt	-	7 075.6 million rupees
Balance of payments	-	-19 039.8 million rupees
Average rate of unemployment	-	43 per cent
Average life expectancy	-	54.6 years
Average infant mortality rate (per 1 000 live births)	-	102
Average maternal mortality rate (per 100 000 live births)	-	850

5. The country is grouped into 75 districts and 5 development regions, namely: eastern, central, western, mid-western and far-western. These groupings derive mainly from the geographical setting of the country. The people of different religions and sects live in the different areas in perfect harmony, and the culture and society of the Kingdom are based on religious tolerance and harmony rather than confrontation. Until 1964 there existed caste divisions among the people. The revised Muluki Ain (The Law of the Realm), introduced in 1964, abolished the caste system and repealed all legal provisions based on the caste system. Under the new Constitution of the Kingdom, 1990 any contravention of this provision is punishable by law.

II. GENERAL POLITICAL STRUCTURE

6. Nepal is an ancient State of the world. However, Nepal's history as a unified nation began only in 1769 when the founder of present day Nepal, the Great King Prithvinarayan Shah, unified a set of small feudal and scattered States and principalities into a single State with the valley town of Kathmandu as its capital. However, in 1846, after the gruesome Kot massacre,

the Shah Kings, successors to Prithvinarayan Shah, lost their power to the Rana Prime Ministers. It was the start of the 104 years of Rana family oligarchy which is known in Nepal as the "darkest period" of history.

7. Even up to the middle of this century, Nepal was very little known outside of South Asia. The conservative Rana regime, which virtually ruled over the country in a very crucial period of world history, did try everything possible to keep Nepal outside the influence of political and industrial transformation that was taking place in other parts of the globe. There was no written Constitution or basic rights and fundamental freedoms of the people. The concept of an independent judiciary, the rule of law and human rights did not exist.

8. The year 1951 marked the turning-point in the history of Nepal when the people's revolution liberated the country from the Rana regime. In 1958 the late King Mahendra Bir Bikram Shah Dev introduced a new Constitution providing a parliamentary form of government and, in the beginning of 1959 under that Constitution, the first ever popular election on the basis of adult franchise was held. The Nepali Congress Party headed by late B.P. Koirala obtained an absolute majority of seats (74 out of 109) in the House of Representatives - the lower house - and B.P. Koirala became the first elected Prime Minister of the country. Thus, the elected Government took power for the first time in the history of Nepal, but this experiment did not last long. On 15 December 1960, King Mahendra declared a state of emergency and took the State power, dismissing the 19-month-old democratically elected Cabinet. The Parliament was dissolved, political parties were banned, and the partyless Panchayat system was introduced. A new Constitution was promulgated in 1961. Under this Constitution, the sovereignty of the State was vested on the Crown and all the legislative, administrative and judicial powers emanated from it. Hence, the King was in the centre and at the apex of the government machinery. Despite the fact that only a few limited rights were given to the people and were protected by the Supreme Court, basic human rights and fundamental freedoms were not part of the Constitution in a true sense.

9. After a popular movement that was launched in 1990, the partyless Panchayat system was dissolved. A new democratic Constitution was promulgated in the same year. The new Constitution, known as the Constitution of the Kingdom of Nepal, 1990 (hereinafter referred to as the "Constitution") established multi-party and pluralistic democratic parliamentary, Westminster-style government much like that of Great Britain, with the King as head of State and the Prime Minister responsible to the Parliament, as head of the Government, and an independent judiciary. The Parliament is a bicameral legislative body but, like in other parliamentary countries, the lower house, the House of Representatives, is more powerful than the National Assembly, the upper house. The executive, legislative and judicial powers of the Kingdom are well defined and separated by the Constitution. The executive power of the country, with the responsibility of issuing general directives, and controlling and regulating the administration of the Kingdom, is vested in His Majesty the King and the Council of Ministers, the Cabinet. His Majesty the King as the head of State appoints the leader of the party which commands a majority in the House of Representatives as Prime Minister and constitutes the Council of Ministers on his recommendation and under his chairmanship. The Prime Minister and other ministers are collectively responsible to

the House of Representatives, and the other ministers are individually responsible for the business of their respective ministries to the House of Representatives as well as to the Prime Minister.

10. The Parliament consists of His Majesty the King and the two Houses of Parliament, namely the House of Representatives and the National Assembly. The House of Representatives consists of 205 members elected from the one-man election constituency on the basis of a one-person-one-vote system through secret ballot by Nepali citizens who have reached the age of 18. The National Assembly consists of 60 members: 10 are nominated by His Majesty the King from amongst persons of high reputation; 35, including 3 women, are elected by the House of Representatives on the basis of a proportional representative system by means of the single transferable vote; and 15 are elected from 5 development regions on the basis of the single transferable vote system by an electoral college consisting of the chiefs and deputy chiefs of village development committees and municipalities and the chiefs, deputy chiefs and members of the district development committees of each region. The term of members of the House of Representatives is five years. The National Assembly is a permanent house. The tenure of office of one third of its members expires every two years.

11. Except as otherwise expressly provided in the Constitution, Parliament is empowered to enact any law. A bill passed by one house of Parliament is transmitted to the other house as soon as possible and if such bill is passed by the receiving house, it is presented to His Majesty the King for the royal assent. A bill becomes an act immediately after His Majesty grants the royal assent to it in accordance with the Constitution. The Government is empowered to enact rules or regulations under delegated legislative power vested under an act of Parliament.

12. Under the Nepal Treaties Act, 2047 (1990), in case of divergence between the provisions of Nepalese law and provisions of an international treaty to which the Kingdom is a party, the provision of the treaty shall apply. The judiciary of the country is an independent organ. The power relating to justice in the Kingdom is exercised by courts and other judicial tribunals in accordance with the provisions of the Constitution, the laws and universally recognized principles of justice. The judiciary of the country comprises 75 district courts, 11 appellate courts and one Supreme Court. The Chief Justice of the Supreme Court of Nepal is appointed by His Majesty the King on the recommendation of the Constitutional Council, a constitutional body composed of the Prime Minister, the Chief Justice, the Speaker of the House of Representatives, the Chairman of the National Assembly and the Leader of the opposition in the House of Representatives as its members. The appointment of other judges of the Supreme Court and courts of appeal and district courts is made by His Majesty the King on the recommendation of the Judicial Council. In Nepal, judges are not part of the civil service and the terms and conditions of their service have been determined by law as required by the Constitution. In addition to the above-mentioned courts, there is also a provision in the Constitution which stipulates that the law may provide for the establishment of special types of courts and tribunals for the purpose of hearing special types of cases, provided that no special court or tribunal may be constituted for the purpose of hearing a particular case.

III. GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

13. It is explicitly mentioned in the Constitution, inter alia, that the guarantee of basic human rights to every citizen of Nepal, the system of multi-party democracy, and the establishment of an independent and competent system of justice with a view to transforming the concept of the rule of law into a living reality are the basic features (principles) of the Constitution which are not subject to amendment. Part 3 of the Constitution has codified all rights and freedoms recognized by the international community through various international as well as regional instruments covering human rights to which Nepal is a party, as fundamental rights of citizen. Thus, Part 3 (arts. 11-23) of the Constitution can be termed as the bill of rights of Nepal. The Constitution also provides for effective remedy and enforcement of the rights conferred by the said part. The basic principle of modern jurisprudence that only an effective and independent judiciary can protect and enforce the fundamental rights of citizens has also been recognized in Nepal and the Supreme Court is empowered, under its extraordinary jurisdiction, to protect such rights by issuing the various forms of writs including habeas corpus, mandamus, certiorari, prohibition and quo warranto.

14. Under article 1 of the Constitution, the Constitution is the fundamental law of the country and all laws inconsistent with it are void. This provision further guarantees the fundamental rights conferred in the Constitution. If any law is inconsistent with the Constitution because it imposes an unreasonable restriction on the enjoyment of the fundamental rights conferred in the Constitution or on any other ground, the Supreme Court, in exercise of its extraordinary jurisdiction (judicial review) under article 88 (1) of the Constitution, upon a petition of any Nepali citizen, may declare a law as void either ab initio or from the date of its decision, if it appears that the law in question is inconsistent with the Constitution. After the promulgation of the new Constitution, there have been occasions wherein some laws have been declared void by the Supreme Court on the ground of inconsistency with the Constitution.

15. The promotion of general welfare of the people by making provisions for the protection and promotion of human rights is one of the Directive Principles of State policy. To this end the State shall, inter alia:

(a) Pursue a policy of promoting conditions of general welfare by making provisions for the protection and promotion of human rights, by maintaining tranquillity and order in the society;

(b) Pursue a policy of raising the standard of living of the general public through the development of infrastructures such as education, health, housing and employment of the people of all regions;

(c) Pursue a policy of strengthening national unity, maintaining the cultural diversity of the country, by promoting healthy and cordial social relations amongst the various religions, castes, tribes, communities, linguistic groups, and by helping in the promotion of their languages, literatures, scripts, arts and cultures;

(d) Pursue a policy of making the female population participate, to a greater extent, in the task of national development by making special provisions for their education, health and employment;

(e) Pursue a policy to make necessary arrangements to safeguard the rights and interests of children, ensure that they are not exploited, and make gradual arrangements for free education;

(f) Pursue such policies in matters of education, health and social security of orphans, helpless women, the aged, the disabled and incapacitated persons as will ensure their protection and welfare; and

(g) Pursue, in order to secure justice, a policy of providing free legal aid to indigent persons for their legal representation in keeping with the principle of the rule of law.

16. Besides the above-mentioned information, the Constitution, in its article 88 (2), contains provision for public locus standi or, as modern jurisprudence terms it, public interest litigation, empowering the Supreme Court to issue various kinds of writs as required for a legal question involved in any dispute of public interest or concern.

17. As a Member of the United Nations and other international as well as regional organizations, Nepal is a party to a large number of international legal instruments concerning human rights including, but not limited to:

Name of international instrument	Date of accession (a) or ratification (r)
Slavery Convention	7 January 1963 (a)
Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery	7 January 1963 (a)
Convention on the Prevention and Punishment of the Crime of Genocide	17 January 1969 (a)
International Convention on the Elimination of All Forms of Racial Discrimination	30 January 1971 (a)
International Covenant on Economic, Social and Cultural Rights	14 May 1991 (a)
International Covenant on Civil and Political Rights	14 May 1991 (a)
Optional Protocol to the International Covenant on Civil and Political Rights	14 May 1991 (a)
International Convention on the Suppression and Punishment of the Crime of Apartheid	12 July 1977 (a)

Name of international instrument	Date of accession (a) or ratification (r)
Convention on the Elimination of All Forms of Discrimination Against Women	22 April 1991 (r)
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	14 May 1991 (a)
International Convention Against Apartheid in Sports	1 March 1989 (r)
Convention on the Rights of the Child	14 September 1990 (r)
Convention on the Political Rights of Women	26 April 1966 (a)

18. Except in an exceptional case, Nepal has become a party to the above-mentioned international legal instruments without any reservation; and consequently, the Kingdom has accepted the jurisdiction of the International Court of Justice in the interpretation and application of the international instruments if such instruments provide such jurisdiction. The Kingdom is also a party to various International Labour Organisation Conventions, such as the Convention on Weekly Rest (Industry) (No. 14), the Convention on Equal Remuneration (No. 100), the Convention on Discrimination (Employment and Occupation) (No. 111), the Convention concerning Minimum Wage Fixing (No. 131), and others.